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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 757

THE UNITED STATES OF AMERICA,

vs.

Appellant,

MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES
APPOINTED BY THE WILL OF MARTIN BEKINS, DECEASED,
ET AL.

No. 772

LINDSAY-STRATHMORE IRRIGATION DISTRICT,

vs.

Appellant,

MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES
APPOINTED BY THE WILL OF MARTIN BEKINS, DECEASED,
ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF CALIFORNIA.

STATEMENT OPPOSING JURISDICTION AND
MOTION TO DISMISS OR AFFIRM.

MAURICE E. HARRISON,
Counsel for Appellees.

W. COBURN COOK,
Of Counsel.

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IN THE
DISTRICT COURT OF THE UNITED STATES, SOUTHERN
DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

IN BANKRUPTCY.

NO. 4575.

IN THE MATTER OF THE PETITION OF LINDSAY-STRATHMORE
IRRIGATION DISTRICT, AN INSOLVENT TAXING AGENCY.

STATEMENT OF GROUND MAKING AGAINST JURIS-
DICTION OF THE UNITED STATES SUPREME
COURT AND MOTION TO DISMISS APPEAL OR
AFFIRM JUDGMENT.

Come now Milo W. Bekins and Reed J. Bekins, as Trustees appointed by the will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins, as Trustees appointed by the will of Katherine Bekins, deceased; J. R. Mason, James Irvine, A. Heber Winder, Trustee for Eva A. Parrington Trust; C. A. Moss, and James H. Jordan, and make the following statement of ground against the jurisdiction of the Supreme Court of the United States of America on this appeal by the United States of America, and respectfully move that the appeal be dismissed, or in the alternative that the judgment of the District Court be affirmed, and show:

The question involved in the appeal presents no substantial Federal question. In the case of *Ashton v. Cameron*

County Water Improvement District No. 1, 298 U. S. 513, 56 Sup. Ct. 892, this Court determined that Chapter IX of the Bankruptcy Act of 1898 was unconstitutional and void. Chapter X of the Bankruptcy Act of 1898, approved August 24, 1937, is not materially different from Chapter IX in so far as it applies to a California irrigation district.

This Court, in the case of *Waterford Irrigation District v. Covell*, 300 U. S. 682, 57 Sup. Ct. 753, and more particularly in the case of *Merced Irrigation District v. Bekins*, — U. S. —, 58 Sup. Ct. 30, declined to review the *Ashton* case. In the latter case the briefs presented the precise issue, whether a California irrigation district is a political subdivision in the sense used in the *Ashton* case.

The only material distinction between Chapter IX and Chapter X is that in Chapter X irrigation districts are classed as taxing agencies and irrigation districts are classified as agricultural improvement districts or local improvement districts devoted chiefly to the improvement of lands for agricultural purposes, whereas in Chapter IX they had been classified as political subdivisions.

The opinion of this Court in the *Ashton* case does not proceed upon a question of classification. The district was held immune to the bankruptcy petition because it was a State agency exercising State sovereignty, and Mr. Justice Cardozo in the dissenting opinion shows that the minority opinion was based upon the proposition that while a State was immune to bankruptcy, "not so a local governmental unit, though the State may have invested it with governmental powers."

Unless, therefore, the *Ashton* decision is to be set aside, the instant appeal involves no substantial Federal question.

The decision of this Court in *Brush v. Commissioner of Internal Revenue*, 300 U. S. 352, 57 Sup. Ct. 495, and the action of this Court in the case of *Merced Irrigation Dis-*

trict v. *Bekins*, — U. S. —, 58 Sup. Ct. 30, indicates that the review of the *Ashton* decision will not be entertained by this Court, and in consequence no substantial Federal question is presented.

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